

REMARKS

I. Status of the Claims

This submission is in response to the Official Action dated November 16, 2005. Claims 25-33, 35-38, and 50-55 are currently pending in the application. Claims 28 – 30, 33 and 36 are objected to; claims 25-27, 31, 32, 35, and 50-55 are rejected; and claims 37 and 38 are withdrawn from consideration.

Claims 25, 52, 53, and 54 are amended herein. Support for the amendment of claims 25, 53, and 54 can be found in the application as filed on page 21 line 22. Claim 52 has been amended to correct an obvious error in claim dependency. No new matter is added by this amendment.

Reconsideration of the above-identified application, in view of the following remarks, is respectfully requested. Each of the Examiner's rejections is discussed below.

II. Rejections under 35 U.S.C. § 102(b)

The Examiner has maintained his rejection of claims 25-27, 31-32, 35, and 50-55 as anticipated by, or in the alternative as obvious over WO 92/01380 to Eastwood. The Examiner contends that the instant composition of an N-containing polycationic polymer matrix with an incorporated non-eluting antimicrobial metallic material, adherent to an article, is seen in Eastwood who provides such compositions as coatings on articles such as wood or leather. The Examiner further states, in response to Applicant's argument regarding the elution of the Eastwood compounds, that elution in the wet state does not require elution when dry.

Applicants respectfully traverse this rejection. As currently amended, the claims are limited to antimicrobial coatings that do not release biocidal amounts of elutables into

the surrounding ambient liquid and therefore do not encompass coatings that elute in the wet state.

In contrast, the compositions taught in Eastwood are compositions that "provide good wet state preservation" (page 15 lines 22-21). In order to be able to provide this wet state preservative property to the medium or solid to be preserved, it is necessary for the composition to elute sufficient quantities (i.e., biocidal amounts) of an antimicrobial agent. Therefore, the Eastwood compositions must release biocidal amounts of elutables into the surrounding ambient liquid and are outside the scope of the currently claimed invention. Even if there is an Eastwood composition that does not elute biocidal amounts of elutables into the air or other dry environment, this composition still does not fall within the scope of the presently claimed invention.

Further, the Examiner is incorrect in stating that Eastwood applies the same materials as the instant invention and thus would have the same functions and effects. Eastwood teaches a composition comprising a thiohydroxamic acid derivative or its metal salt together with a biocide material such as an agent affecting membrane permeability. This composition is a mixture containing an acid-based metal salt (compound A; i.e., a metal salt of thiohydroxamic acid) and another agent (compound B; i.e., a biguanide). There is no teaching that the two compounds bond with each other.

Comparatively, the present invention teaches the complexation of a polycationic polymer that, due to its positive charge, cannot form a salt with a positively charged metal ion to form the compound described by Eastwood. The polycationic polymer is non-leachably bound to a metallic material. Eastwood teaches the use of a mixture, not a complex which is non-leachably bound.

Accordingly, reconsideration and withdrawal of the present rejection under 35 U.S.C. § 102 is respectfully requested.

III. Rejections under 35 U.S.C. § 103

The present invention is similarly not obvious over Eastwood. Eastwood cannot be combined with Zeneka, Fox (i.e., the previously cited reference), or the knowledge of one of ordinary skill in the art under 35 USC §103 since there is no motivation to modify Eastwood's compositions to form the coating of the present invention. Eastwood teaches a composition that provide good wet state preservation and is therefore useful as an antimicrobial that elutes into a surrounding ambient liquid. Therefore, Eastwood teaches away from the present invention that teaches a coating that does not release biocidal amounts of elutables into the surrounding ambient liquid. A reference that teaches compositions that elute cannot be used to find the present invention claiming non-eluting compositions obvious. There is no discussion in Eastwood that such a composition would be useful, much less how to form it. Therefore, combination of Eastwood with any reference or knowledge of one of ordinary skill in the art cannot be used to form the compositions in the presently claimed invention.

Accordingly, reconsideration and withdrawal of the present rejection under 35 U.S.C. §103 is respectfully requested.

IV. Double-Patenting

Claims 25-32 and 50-55 have been rejected by the Examiner under the judicially created doctrine of obviousness-type double-patenting as being allegedly unpatentable over various claims in commonly-owned U.S. Patent 5,849,311.

In response, it is submitted that a terminal disclaimer will be timely filed upon allowance of any conflicting claims in the instant application.

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Therefore, in view of the above remarks, it is earnestly requested that the application be reconsidered and that all pending claims be allowed and the case passed to issue.

If there are any other issues remaining that the Examiner believes could be resolved through either a Supplemental Response or an Examiner's Amendment, the Examiner is respectfully requested to contact the undersigned at the telephone number indicated below.

In view of the above amendment, applicant believes the pending application is in condition for allowance.

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Respectfully submitted,

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